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Lau Bee Lan @ Low Bee Lan v Wong Lai Kuen

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HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCvC-5580–12 OF 2023
ROZ MAWAR JC
26 JULY 2024

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Family Law — Application — Application for declaration of legal wife — Whether the event of marriage was proved — Whether the acknowledgment from the family members concluded the marriage was taken place — Whether there was legal basis to recognise second marriage — Whether the court could make an order in relation to the use of the Puan Sri's title — Law Reform (Marriage and Divorce) Act 1976 ss 4, 5, 7 & 33

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The plaintiff in this case sought a declaration that she was the legal wife of the late Tan Sri Dato' Lim Tong Yong @ Lim Tong Yaim ('the deceased') and the title 'Puan Sri' ought to be hers alone. The plaintiff's marriage certificate shown that the plaintiff had been married the deceased since 1974 until his death less than a year ago. The plaintiff was legally married to the deceased on 18 December 1974 through a customary Chinese wedding in Muar Johor and registered on the same day. The marriage was prior to the enforcement of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). Together, they bore five children. The dispute arose when the defendant also claimed that she was the deceased's legal wife where she met the deceased in 1978 in Singapore when he was working as a lecturer of Malays Studies in Culin College in Singapore. They had since started to live as husband and wife consensually at Subang Jaya in 1979. The plaintiff contended based on the evidence that the defendant had procured a valid immigration status to live in Malaysia given that she was born in China and was of a China national. The plaintiff averred that the defendant was married and/or in another relationship of which she had two children. In support of the plaintiff's contention that she and the deceased were living in matrimony in Singapore from 1979 to 1983, she produced evidence of their daughter Lim Chang Cheng's school record of inoculation and statements of account for CPF contributions. Their matrimonial home address was in Singapore. The plaintiff had also challenged the truth of the defendant's averment that the deceased was a lecturer at Culin College Singapore denying the existence of such college. In the defendant's affidavit, she had also averred that she and the deceased had gone through a Chinese customary marriage. At first blush, it gave the impression that the purported Chinese customary marriage had occurred in 1979 although no date was stated in the defendant's affidavits. The defendants exhibited several photographs to show they were married. There was also a photograph in which was a picture of the defendant,

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the deceased and their son which was dated September 1986, and another dated April 1987. Lim Zhao Qi was born between Lim Zhen Qi (born in 1985) and Lim Dan Qi (born in 1987) from the union of the plaintiff and the deceased. The defendant's additional affidavit enclosed a statutory declaration from Lim Thong Hai who was the older brother of the deceased dated 23 January 2024. He had stated that he was aware his late brother had two families. Issues of consideration were: (a) whether the event of marriage was proved; (b) whether the acknowledgment from the family members concluded the marriage was taken place; (c) whether there was legal basis to recognise second marriage; and (d) hether the court could make an order in relation to the use of the Puan Sri's title.

Held:

(1) There was no date as to the alleged customary wedding ceremony photograph. Lim Zhao Qi was born in 1986. If at all, it could even be in 1986 itself (that was the position of the deceased's marriage to the plaintiff — they married the same year as the birthdate of their first child). There were no pictures of such a momentous occasion for this court to rule on a balance of probabilities that the alleged customary wedding was before 1 March 1982. The undisputed evidence was that the deceased was still carrying on with his legal marriage with the plaintiff, producing three more children in 1987, 1991 and 1997 respectively. The defendant had managed to procure statutory declarations from the deceased's elder sister and his sister-in-law who too, confirmed they were aware of the defendant. However, they placed her around 1980 with no definitive date. Thus, the evidence did not serve to help the defendant. In fact, it led to more confusion and uncertainty (see para 11).

(2) The court was of the view that although there was awareness on the part of the deceased's family members of him having had the defendant and their son in his life, which a few of them loosely called 'another family' or a 'second family', it was not sufficient to conclude the defendant and the deceased held a customary wedding ceremony. The court noted that no one, not any member of the deceased's family or even the defendant herself could procure any evidence whatsoever, whether in the form of pictures or other types or kind, to invite this court to conclude such an event took place before 1 March 1982. There were other statutory declarations from the deceased social circle and business associates but none of them could state for sure when the defendant married the deceased. Their knowledge of the defendant being the deceased's wife was on the premise that the deceased had introduced her as such. That in itself did not mean that there had been a Chinese customary marriage that took place. This 'open secret', as the deceased had brought the defendant

instead of the plaintiff to both of the investiture ceremonies did not give their position a legal standing of a lawful marriage, especially so after 1982 (see paras 15 &17).

(3) She had known much about the deceased, as eager lovers often divulge themselves to each other, so she would have most likely known that he was already married when she claimed to have met him. There was also the issue of her capacity to enter into any form of marriage before 1983. The plaintiff made allegations about the defendant's prior marital status and children. The defendant did not provide a direct response to these specific allegations in her affidavits or submissions, as far as can be determined from the given documents and during oral arguments. The defendant's failure to address these allegations may be considered in evaluating the overall credibility of her claim to a customary marriage with the deceased, as per the principle stated in *Ng Hee Thoong & Anor v- Public Bank Bhd* [1995] 1 MLJ 281. Furthermore, due to the amendments to the Act, and in the absence of any evidence of registration of the purported marriage under s 33 of the Act, there was no legal basis to recognise the relationship between the defendant and the deceased as a marriage (see para 22).

(4) There were no statutes for the court to base on in determining that right to be conferred and referred the title 'Puan Sri'. The court was of the considered view that it would be best for the plaintiff to revert to Istana Negara where the deceased's Tan Sri-ship was accorded on 5 June 2010. For the plaintiffs prayer that the court declares that she was to be the sole individual who was entitled to use and enjoy the appellation of Puan Sri after the demise of the deceased, the court was not inclined to grant so. In relation to the plaintiffs prayer to seek an injunction against the defendant from the usage of the title Puan Sri, the evidence on a balance of probabilities did not show that the defendant had indeed used the title. Though the court took note that the defendant had been referred to as Puan Sri, it was not her doing. It seemed to be from hers and the deceased's social circle. Premised on this, the said relief sought by the plaintiff was not granted. The court found that it was the plaintiff who was the sole lawful wife of the deceased (see paras 27–30).

[Bahasa Malaysia summary

Plaintif dalam kes ini memohon satu deklarasi bahawa beliau adalah isteri sah mendiang Tan Sri Dato' Lim Tong Yong @ Lim Tong Yaim ('si mati') dan gelaran 'Puan Sri' sepatutnya menjadi miliknya seorang. Sijil nikah plaintif menunjukkan bahawa plaintif telah berkahwin dengan si mati sejak 1974 sehingga kematiannya kurang setahun lalu. Plaintif telah sah berkahwin dengan si mati pada 18 Disember 1974 melalui perkahwinan adat Cina di Muar Johor dan didaftarkan pada hari yang sama. Perkahwinan itu sebelum penguatkuasaan Akta Membaharui Undang-undang (Perkahwinan dan

Perceraian) 1976 ('Akta tersebut'). Bersama-sama, mereka mempunyai lima orang anak. Pertikaian timbul apabila defendan juga mendakwa bahawa beliau adalah isteri sah si mati di mana beliau bertemu dengan si mati pada 1978 di Singapura ketika beliau bekerja sebagai pensyarah Pengajian Melayu di Kolej Culin di Singapura. Mereka telah mula hidup sebagai suami isteri secara sah di Subang Jaya pada tahun 1979. Plaintif berpendapat berdasarkan keterangan bahawa defendan telah memperoleh status imigresen yang sah untuk tinggal di Malaysia memandangkan beliau dilahirkan di China dan merupakan warganegara China. Plaintif menegaskan bahawa defendan telah berkahwin dan/atau dalam hubungan lain yang mana dia mempunyai dua orang anak. Bagi menyokong dakwaan plaintif bahawa beliau dan si mati hidup dalam perkahwinan di Singapura dari 1979 hingga 1983, beliau mengemukakan keterangan rekod sekolah anak mereka Lim Chang Cheng mengenai inokulasi dan penyata akaun untuk caruman CPF. Alamat rumah perkahwinan mereka adalah di Singapura. Plaintif juga telah mencabar kebenaran penegasan defendan bahawa si mati adalah seorang pensyarah di Kolej Culin Singapura menafikan kewujudan kolej tersebut. Dalam afidavit defendan, beliau juga telah mengesahkan bahawa beliau dan si mati telah melalui perkahwinan adat Cina. Pada mulanya, ia memberi gambaran bahawa perkahwinan adat Cina yang dikatakan telah berlaku pada tahun 1979 walaupun tiada tarikh dinyatakan dalam afidavit defendan. Defendan mengemukakan beberapa keping gambar untuk menunjukkan mereka sudah berkahwin. Terdapat juga sekeping gambar yang mengandungi gambar defendan, si mati dan anak lelaki mereka bertarikh September 1986, dan satu lagi bertarikh April 1987. Lim Zhao Qi dilahirkan antara Lim Zhen Qi (lahir pada 1985) dan Lim Dan Qi (lahir pada tahun 1987) dari perkahwian plaintif dan si mati. Afidavit tambahan defendan menyertakan akuan berkanun daripada Lim Thong Hai yang merupakan abang kepada si mati bertarikh 23 Januari 2024. Beliau telah menyatakan bahawa beliau sedar mendiang abangnya mempunyai dua keluarga. Isu-isu untuk pertimbangan adalah: (a) sama ada peristiwa perkahwinan telah dibuktikan; (b) sama ada pengakuan daripada ahli keluarga memberikan kesimpulan bahawa perkahwinan itu telah berlaku; (c) sama ada terdapat asas undang-undang untuk mengiktiraf perkahwinan kedua; dan (d) adakah mahkamah boleh membuat perintah berhubung dengan penggunaan gelaran Puan Sri.

Diputuskan:

(1) Tiada tarikh mengenai gambar majlis perkahwinan adat yang dikatakan. Lim Zhao Qi dilahirkan pada tahun 1986. Jika ada, ia juga boleh berlaku pada tahun 1986 sendiri (itulah kedudukan perkahwinan si mati dengan plaintif — mereka berkahwin pada tahun yang sama dengan tarikh lahir anak pertama mereka). Tiada gambar peristiwa yang begitu penting untuk mahkamah ini memutuskan imbangan kebarangkalian bahawa perkahwinan adat yang didakwa adalah sebelum 1 Mac 1982.

Keterangan yang tidak dipertikaikan adalah si mati masih meneruskan perkahwinannya yang sah dengan plaintif, menghasilkan tiga lagi anak-anak masing-masing pada tahun 1987, 1991 dan 1997. Defendan telah berjaya mendapatkan akuan berkanun daripada kakak si mati dan kakak iparnya yang juga, mengesahkan mereka menyedari defendan. Bagaimanapun, mereka meletakkannya sekitar tahun 1980 tanpa tarikh pasti. Oleh itu, keterangan tidak berfungsi untuk membantu defendan. Malah, ia membawa kepada lebih kekeliruan dan ketidakpastian (lihat perenggan 11).

(2) Mahkamah berpandangan bahawa walaupun terdapat kesedaran di pihak ahli keluarga si mati bahawa beliau telah mempunyai defendan dan anak lelaki mereka dalam hidupnya, yang segelintir daripada mereka secara longgar memanggil 'keluarga lain' atau 'keluarga kedua', ia tidak mencukupi untuk membuat kesimpulan defendan dan si mati mengadakan majlis perkahwinan adat. Mahkamah mengambil maklum bahawa tiada sesiapa, bukan mana-mana ahli keluarga si mati malah defendan sendiri boleh mendapatkan sebarang keterangan, sama ada dalam bentuk gambar atau jenis lain, untuk menjemput mahkamah ini membuat kesimpulan bahawa peristiwa sedemikian berlaku sebelum 1 Mac 1982. Terdapat akuan berkanun lain daripada kalangan sosial dan rakan perniagaan si mati tetapi tiada seorang pun daripada mereka dapat menyatakan dengan pasti bila defendan berkahwin dengan si mati. Pengetahuan mereka tentang defendan sebagai isteri si mati adalah atas premis bahawa si mati telah memperkenalkannya sebegitu. Itu sendiri tidak bermakna telah berlaku perkahwinan adat Cina. 'Rahsia terbuka' ini, kerana si mati telah membawa defendan dan bukannya plaintif ke kedua-dua upacara perasmian tidak memberikan kedudukan mereka kedudukan undang-undang perkahwinan yang sah, terutamanya selepas 1982 (lihat perenggan 15 & 17).

(3) Beliau tahu banyak tentang si mati, kerana pasangan bercinta sering mendedahkan diri mereka kepada satu sama lain, jadi dia kemungkinan besar tahu bahawa beliau sudah berkahwin apabila beliau mendakwa telah bertemu dengannya. Terdapat juga isu keupayaannya untuk memasuki apa-apa bentuk perkahwinan sebelum 1983. Plaintif membuat dakwaan mengenai status perkahwinan defendan terdahulu dan anak-anak. Defendan tidak memberikan jawapan langsung kepada dakwaan khusus ini dalam afidavit atau penghujahannya, setakatmana yang boleh ditentukan daripada dokumen yang diberikan dan semasa hujah lisan. Kegagalan defendan untuk menangani dakwaan ini boleh dipertimbangkan dalam menilai kredibiliti keseluruhan tuntutannya terhadap perkahwinan adat dengan si mati, seperti prinsip yang dinyatakan dalam *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281. Tambahan pula, disebabkan oleh pindaan kepada Akta, dan jika tiada sebarang keterangan pendaftaran perkahwinan yang dikatakan

di bawah s 33 Akta tersebut, tidak ada asas undang-undang untuk mengiktiraf hubungan antara defendan dan si mati sebagai perkahwinan (lihat perenggan 22).

(4) Tiada statut untuk dijadikan asas oleh mahkamah dalam menentukan hak untuk diberikan dan merujuk gelaran 'Puan Sri'. Mahkamah berpendapat adalah lebih baik plaintif kembali ke Istana Negara di mana gelaran Tan Sri mendiang telah diberikan pada 5 Jun 2010. Bagi permohonan plaintif, mahkamah mengisytiharkan bahawa beliau adalah individu tunggal yang berhak menggunakan dan menikmati gelaran Puan Sri selepas kematian si mati, mahkamah tidak cenderung untuk memberikannya. Berhubung dengan permohonan plaintif memohon injunksi terhadap defendan daripada penggunaan gelaran Puan Sri, keterangan mengenai imbangan kebarangkalian tidak menunjukkan defendan memang menggunakan gelaran tersebut. Walaupun mahkamah mengambil maklum bahawa defendan telah dirujuk sebagai Puan Sri, itu bukan perbuatannya. Ia seolah-olah dari kalangan sosial beliau dan si mati. Atas dasar ini, relif tersebut yang diminta oleh plaintif tidak diberikan. Mahkamah mendapati bahawa plaintif merupakan isteri tunggal si mati yang sah (lihat perenggan 27–30).]

Cases referred to

Cham Kam Kew v Chan See Chuen & Ors [2014] 1 LNS 442, HC (refd)
Hue Chooi Yin v Chew Pit King [2010] 1 LNS 998; [2010] 8 MLRH 819, HC (refd)
Khoo Guat Tee v Lim Kim Neo [2016] MLJU 42; [2016] MLRHU 35, HC (refd)
Lee Yin v Kwan Mai Han & Anor [2020] MLJU 1887, HC (refd)
Loo Boo Cheai (administrator of the estate of Chan Kun Hong, deceased) v Chen Yuh Feng & Ors [2021] 6 MLJ 837; [2021] 6 MLRA 348, CA (folld)
Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281; [1995] 1 MLRA 48, CA (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 4, 5, 7(1), 33
Penal Code s 494

Chris Lim Su Heng (with Nur Dalilah bt Zainol Abidin, Nur Khidmah Huzaisham, Rachel Chya Yun Wen (PDK), Meor Amirul Aiman bin Meor Fakharuddin and Lee Yvonne (Pupil in Chambers)) (Chris Lim Su Heng) for the plaintiff.
R S Sodhi (with Mugelen Chandran and Theng Kai Chi) (Sodhi Chambers) for the defendant.

Roz Mawar JC:

[1] When a man of considerable standing in Malaysian society, had passed away in a hospital in China on 12 August 2023, little did anyone suspect that his death would spark a legal battle that would lay bare the complexities of love, marriage, and the weight of tradition in our modern world. Each party that stood before this court claimed that she is the rightful wife of the deceased. This legal battle extends to a 'title fight' as the plaintiff seeks a declaration that she is the legal wife of the late Tan Sri Dato' Lim Tong Yong @ Lim Tong Yaim and the title 'Puan Sri' ought to be hers to use and hers alone.

[2] The plaintiff's marriage certificate proudly proclaims a union with the deceased that has endured since 1974 until his death less than a year ago. On the other, the defendant, who spoke of a love that blossomed in the late 1970s and claimed that they had a marriage solemnized by custom rather than bureaucracy. A question older than any marriage is: What truly makes a marriage? Is it the stamp of official approval, the blessing of the state? Or is it the lived experience of two people who have chosen to share their lives? A legal response is that the amendment to our law on 1 March 1982 where s 5 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act') which is applicable to the parties here, makes it clear that one can contract one marriage only at a time:

> Every person who on the appointed date is lawfully married under any law, religion, custom or usage to one or more spouses shall be incapable, during the continuance of such marriage, or marriages, of contracting a valid marriage under any law, religion, custom or usage with any other person, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside of Malaysia.

[3] That subsequent marriage is deemed an egregious act that attracts s 7(1) of the Act and also s 494 of the Penal Code. The respective provisions of laws are reproduced herein:

> Any person lawfully married under any law, religion, custom or usage who during the continuance of such marriage purports to contract a marriage under any law, religion, custom or usage in contravention of section 5 shall be deemed to commit the offence of marrying again during the life-time of husband or wife, as the case may be, within the meaning of section 494 of the Penal Code [Act 574].
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> ...
>
> Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of it taking place during the life of such husband or wife and whether such marriage has taken place within Malaysia or outside Malaysia, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

[4] Thus, this court combs through all the evidence adduced to make a finding of fact whether on a balance of probabilities there was a marriage between the deceased and the defendant as the latter had claimed. This court scrutinised the timelines to ascertain whether there is evidence to move this court to conclude, on a balance of probabilities that such purported customary marriage was solemnised prior to 1 March 1982.

THE POSITION OF THE PLAINTIFF

[5] This court is satisfied that the plaintiff, was legally married to the deceased on 18 December 1974. It was through a customary Chinese wedding in Muar Johor. Their marriage was registered on the same day at the National Registration Department (District of Muar) with Registration Number 391/74 and Siri Number KC100165302. It was prior to the enforcement of the Act in 1976. The Court of Appeal was instructive in its decision in *Loo Boo Cheai (administrator of the estate of Chan Kun Hong, deceased) v Chen Yuh Feng & Ors* [2021] 6 MLJ 837; [2021] 6 MLRA 348. Three elements must be fulfilled which are proof of co-habitation, and intention to form a permanent union and reputation of the marriage.

[6] With the registration, it is apparent that they had the intention to form a permanent union in the form of husband and wife. Together, they bore five children. The timeline is important as it would indicate that the marriage had carried on as it was with the plaintiff and the deceased having co-habitated from 1974 — their first daughter Lim Chang Ching was born in 1974, their second child a son by the name of Lim Zhen Qi was born in 1985, the third child another son Lim Dan Qi was born in 1987, their fourth child a daughter called Lim An Qi was born in 1991 and their youngest child a third son by the name of Lim Jiang Qi who was born in 1997. The address given for the deceased's investiture for the receipt of the awards from the Palace of Negeri Sembilan and from our Istana Negara all confirm that the matrimonial home with the plaintiff. It also gives credence to the reputation of marriage — further confirmed by the condolence note from the office of His Majesty The King (YDPA) to the family the deceased had with the plaintiff.

[7] It is this court's finding of fact that the marriage between the plaintiff and the deceased vide Chinese custom and immediately registered was a valid one in the eyes of the law. See ss 4 and 33 of the Act. There is no evidence of a dissolution of the marriage. In its absence, it is safe for this court to hold that the plaintiff is the deceased's legal wife from December 1974 (see *Lee Yin v Kwan Mai Han & Anor* [2020] MLJU 1887).

THE DEFENDANT'S POSTURE

[8] The defendant contended that she met the deceased in 1978 in Singapore when he was working as a lecturer of Malays Studies in Culin College in Singapore and they had started to live as husband and wife consensually at Subang Jaya in 1979. The plaintiff attacked on the outset the evidence that the defendant had procured a valid immigration status to live in Malaysia given that she was born in China and was of a China national. The plaintiff averred that the defendant was married and/or in another relationship of which she had two children. In support of the plaintiffs contention that she and the deceased were living in matrimony in Singapore from 1979 to 1983, she produced evidence of their daughter Lim Chang Cheng's school record of inoculation and statements of account for CPF contributions. Their matrimonial home address in Singapore was at Block 214, 1-F Boon Lay Place. The plaintiff had also challenged the truth of the defendant's averment that the deceased was a lecturer at Culin College Singapore denying the existence of such college.

[9] In the defendant's affidavit, she had also averred that she and the deceased had gone through a Chinese customary marriage. It was in the same paragraph as the information above. At first blush, it gave the impression that the purported Chinese customary marriage had occurred in 1979 although no date was stated in the defendant's affidavits. The defendant had exhibited some photos. The first of the deceased and the defendant was not dated, the second photo carried the date of 29 June 1997 whilst the third photo was dated 9 September 1999. The fourth photo was more recent than the previous ones with a date stamp of 1 November 2005. The fifth photo of them was not dated. There is a sixth photo which is a picture of the defendant, the deceased and their son Lim Zhao Qi which is dated September 1986, and another dated April 1987. Lim Zhao Qi this court notes was born between Lim Zhen Qi (born in 1985) and Lim Dan Qi (born in 1987) from the union of the plaintiff and the deceased.

[10] Several other photos seemed more recent to 1987 but are undated. The reason for this Court's opinion that the photos were taken after 1987 is based on the more mature appearances of the defendant and the deceased, their clothing and surrounding circumstances that on a balance of probabilities were at a time after 1987. The point remains that there is nothing to corroborate the defendant's contention that her marriage to the deceased was performed by way of Chinese custom. The defendant's additional affidavit enclosed a statutory declaration from Lim Thong Hai who is the older brother of the deceased dated 23 January 2024. He had stated that he was aware his late brother had two families. According to him, the deceased introduced the defendant to the family some 'time late 1970s before proceeding to marry her through a Chinese

customary marriage in front of our parents'. He had also stated:

> Our parents accepted WLK as the Deceased's wife and engraved her name onto their tombstone upon their death. I am aware that the Deceased and WLK got a son thereafter their marriage and had named him Lim Zhao Qi.
>
> I verily believe that from the day the Deceased wed WLK till his demised, he never divorced WLK and WLK remained by his side till his death in China.

[11] There are many concerns with this evidence that the defendant presented. Firstly, and most obvious of all, there is no date as to the alleged customary wedding ceremony. Lim Zhao Qi was born in 1986. If at all, it could even be in 1986 itself (that was the position of the deceased's marriage to the plaintiff — they married the same year as the birthdate of their first child). There are no pictures of such a momentous occasion for this court to rule on a balance of probabilities that the alleged customary wedding was before 1 March 1982. The undisputed evidence is that the deceased was still carrying on with his legal marriage with the plaintiff, producing three more children in 1987, 1991 and 1997 respectively. The defendant had managed to procure statutory declarations from the deceased's elder sister Lim A Ait and his sister-in-law Goh Soh Hua who too, confirmed they were aware of the defendant. However, they placed her around 1980 with no definitive date. Thus, the evidence does not serve to help the defendant. In fact, it led to more confusion and uncertainty.

[12] This court is not putting too much weight on the statutory declaration of Goh Soh Hua — her two affidavits are in contradiction of each other. In the first which was averred on 19 January 2024 she said she was the wife of the deceased's older brother whilst the second one that she had declared on 24 January 2024 stated that she was married to the deceased's younger brother. A mixed-up of a fact as elementary as this put the deponent's integrity, credibility and truthfulness in question. In one she had stated that the defendant had visited the deceased's parents as she was the one who had stayed with the elderly couple until their demise. The later statutory declaration stated that she had taken care of them until the deceased's parents had moved to Kuala Lumpur. On a balance of probabilities, her recollection of facts is highly questionable. There is also information in the public domain that gives suspicions on the accuracy of the facts Goh had declared. Namely, that the deceased's younger brother had taken up Indonesian citizenship and took up the name as Bob Halim Lim who had been residing in Indonesia. Additionally, their daughter announced that she and her brother were brought up singlehandedly by Goh — there were facts that implied this was in Malacca. Hence, on a balance of probabilities, the allegation of Goh taking care of her in-laws (the deceased's parents) in Johor is highly questionable. That makes her evidence unreliable.

[13] As to Lim A Ait, the deceased's elder sister who would be seventy-five years old is not proficient in English according to the plaintiff who had challenged her statutory declaration procured by the defendant. In any event, she too did not confirm any date of the purported Chinese customary marriage to the deceased that would support the defendant's contention. The statutory declaration by Lim Moey Yeei, a relation of the deceased, also does not carry with it the full credibility that it may have for two reasons — one is that he was merely a child of the tender age of nine years in 1980 and the other is that his averment that he was present in Guangzhou China to keep the defendant and son Lim Zhao Qi company upon hearing the death of the deceased is a new fact that went against the undisputed fact that the defendant and son were not present at the funeral in China nor in Malaysia.

[14] This court also assessed the evidence that the demise of the deceased's late father in 2007 whereby there was no mention of the defendant at all despite her efforts to show that the deceased's family had formally accepted her in their fold. The issue of the tombstone which was a more recent addition after the demise of the deceased's mother in 2011 certainly show that the defendant seemed to be a part of the deceased's family, whether or not the plaintiff had consented to it or even aware of it. Nonetheless, it still did not show on a balance of probabilities that the defendant had undergone a Chinese customary marriage ceremony prior to 1982.

[15] The consideration of this court is that although there was awareness on the part of the deceased's family members of him having had the defendant and their son in his life, which a few of them loosely called 'another family' or a 'second family', it is not sufficient to conclude the defendant and the deceased held a customary wedding ceremony. This court notes that no one, not any member of the deceased's family or even the defendant herself could procure any evidence whatsoever, whether in the form of pictures or other types or kind, to invite this court to conclude such an event took place before 1 March 1982.

[16] Acceptance by family members is one thing in terms of carrying on with life and the intricate relationships that bind blood-kins but legalizing a position is another. The latter will clearly ascertain and scope in the lawful rights attached thereto.

[17] There were other statutory declarations from the deceased social circle and business associates but none of them could state for sure when the defendant married the deceased. Their knowledge of the defendant being the deceased's wife was on the premise that the deceased had introduced her as such. That in itself did not mean that there had been a Chinese customary marriage that took place. This 'open secret', as the deceased had brought the

defendant instead of the plaintiff to both of the investiture ceremonies, does not give their position a legal standing of a lawful marriage, especially so after 1982.

[18] Some who had executed the statutory declarations confirmed that they knew of the deceased's marriage with the plaintiff and also that the deceased had maintained a relationship with the defendant that had produced a son Lim Zhao Qi. The earliest year stated is 1986 when Lim Chin Boon witnessed the birth of Lim Zhao Qi. The rest who made the statutory declarations were introduced to the defendant as the deceased's wife cited 1990s and early 2000s as the date.

[19] This court took note of the wedding invitations for the defendant's son which were issued under the name of the deceased. That acknowledged the fact that he did indeed father a son with the defendant. But, the invitations do not necessarily mean, and here given all the evidence in this case, that they were married prior to 1 March 1982.

THE DECEASED'S LEGAL WIFE

[20] The exercise of scrutinising the evidence is necessary given the legal framework of the Act which on 1 March 1982 significantly altered the landscape of matrimonial law where if there is evidence that the defendant and the deceased had a union solemnised under any custom or usage prior to that date, then the marriage shall be deemed to be registered under the Act. The law provided for under s 4 of the Act recognises the validity of customary marriages solemnised before the amendment came into effect, provided they were valid under the relevant custom at the time. The defendant herself had failed to provide the date, year or venue of the purported Chinese customary marriage with the deceased. One of the necessary elements which are necessary to prove such as long continued co-habitation has not been proven. The statutory declarations of many who had attested to her relationship with the deceased fall short of providing concrete evidence of a customary marriage ceremony or its essential elements. On a balance of probabilities, the birth of the defendant's son with the deceased between the second and third sons of the plaintiff with the deceased, points to the illegitimacy of the defendant's relations rather than support her contention of a marriage. The deceased there after in 1991 and in 1997 which would be ten years after the defendant's son was born, fathered his two younger children with the plaintiff. To this court's mind, these facts and that where the deceased himself had proffered his matrimonial home as his residential address even in 2010 when he was conferred the award of Tan Sri' shows a long continuous cohabitation with the plaintiff (see *Cham Kam Kew v Chan See Chuen & Ors* [2014] 1 LNS 442; *Hue Chooi Yin v Chew Pit King* [2010] 1 LNS 998; [2010] 8 MLRH 819; *Khoo Guat Tee v Lim Kim Neo*

[2016] MLJU 42; [2016] MLRHU 35).

[21] The deceased's family and friends may have accepted the defendant as part of the deceased's life. The deceased may have brought her to the significant ceremonies that illustrate his accomplishments. All these the defendant seemed to have freely and boldly lived towards the end of the 1990s into the early 2000s. Yet by law, she is not his wife.

[22] She had known much about the deceased, as eager lovers often divulge themselves to each other, so she would have most likely known that he was already married when she claimed to have met him. There is also the issue of her capacity to enter into any form of marriage before 1983. The plaintiff made allegations about the defendant's prior marital status and children. The defendant did not provide a direct response to these specific allegations in her affidavits or submissions, as far as can be determined from the given documents and during oral arguments. The defendant's failure to address these allegations may be considered in evaluating the overall credibility of her claim to a customary marriage with the deceased, as per the principle stated in *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281; [1995] 1 MLRA 48. Furthermore, due to the amendments to the Act, and in the absence of any evidence of registration of the purported marriage under s 33 of the Act, there is no legal basis to recognize the relationship between the defendant and the deceased as a marriage.

[23] Upon consideration of the evidence and relevant legal principles, this court finds that the plaintiff is the rightful and legal wife of the deceased. The plaintiff has provided unassailable evidence of her marriage, which was solemnised and registered on 18 December 1974, well before the enactment of the LRA.

[24] It must be noted that there are many micro issues regarding the statutory declarations which formed the plaintiffs grouses but they did not dislodge this court's findings.

THE 'PUAN SRI' TITLE

[25] During arguments, this court posed a question on the bequeath of the title 'Puan Sri'. It is acknowledged that the title 'Tan Sri' is the second highest title at the Federal Level. His Majesty The King bestows the title based on the recommendation of the Federal Government. When a man is awarded the title Tan Sri', his wife is automatically given the courtesy title 'Puan Sri'. This court understands this practice as a way to acknowledge and honour the spouse of the

A title holder. To this court's question on the rights to bequeath the title 'Puan Sri' on the legal wife of the deceased, none of the counsels could provide any authority.

B **[26]** The discernment of this court's is that the title 'Puan Sri' for the wife of a Tan Sri' in Malaysia is more of a customary and traditional practice rather than a legal right. It has a non-legal nature — the conferral of 'Puan Sri' is not enshrined in legal statutes but is rather a social convention. There is no specific law that mandates the title must be given; it is an automatic courtesy title that accompanies the conferral of 'Tan Sri'. Therefore, while it is a standard and C expected practice, it is not a legal entitlement codified in law. It is a respected tradition that is widely adhered to in Malaysian society.

[27] Furthermore, on this position that the 'Puan Sri' title may be more D customary is this; when a woman is conferred the title Tan Sri' for her achievements, her spouse is not accorded any title. Perhaps based on our historical patriarchal society, titles and awards were designed for a male-dominated realm. But having evolved where honours are now conferred to successful women, custom has not yet caught up to address her spouse. E Neither has the law. There are no statutes for this court to base on in determining that right to be conferred and referred the title 'Puan Sri'.

[28] This court is of the considered view that it would be best for the plaintiff to revert to Istana Negara where the deceased's Tan Sri-ship was accorded on F 5 June 2010. For the plaintiffs prayer that this court declares she is to be the sole individual who is entitled to use and enjoy the appellation of Puan Sri after the demise of the deceased, this court is not inclined to grant so.

[29] In relation to the plaintiffs prayer to seek an injunction against the G defendant from the usage of the title Puan Sri. Evidence on a balance of probabilities did not show that the defendant had indeed used the title. Though this court takes note that the defendant had been referred to as Puan Sri, it was not her doing. It seemed to be from hers and the deceased's social circle. Premised on this, the said relief sought by the plaintiff is not granted.

H

THIS COURT'S ORDER

[30] Based on the evidence before this court, the defendant had not shown on a balance of probabilities that her purported marriage to the deceased was I carried out prior to 1982. Therefore, this court finds it is the plaintiff who is the sole lawful wife of the deceased. This court declares that the plaintiff is such.

[31] This matter could have been resolved while the deceased was still alive and ought not to have reached the corridors of this court. To seek from this

court a declaration that the title 'Puan Sri' ought to be accorded when the deceased had long passed was avoidable and it burdened the judicial system and incurred unnecessary costs for all involved. Given all that, this court orders each party is to bear its own costs. This should serve as a reminder that litigation should be a last resort, particularly in cases involving personal and familial issues that could have been amicably resolved outside of court.

Order accordingly.

Reported by Muhamad Azham Marwan